SUPREME COURT, U.S.
FILED
1972

IN THE

Supreme Court of the United States

October Term, 1971

No. 71-1015

GERALD A. SCHROEDER and
CLARA JOHNSON SCHROEDER,

Petitioners,

vs.

J. C. BUSENHART, et al.,

Respondents.

Petition For Writ Of Certiorari To The Appellate Court Of Illinois, First District.

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INDEX

	Page
Opinion below	5
Jurisdiction	5
Questions presented	6
Constitutional and statutory provisions involved	7
Statement of the case	10
Reasons for granting writ	12
Conclusion	16
Appendix	18

CITATIONS

Cases:

Chandler v. Fretag, 348 U.S. 3, 75 S.Ct. 1, L.Ed. 4

Douglas v. People, 83 S.Ct. 814, U.S. 353, 9 L.Ed.2d 811, rehearing denied 83 S. Ct. 1288, 373 U.S. 905, 10 L.Ed.2d 200

Farmer v. Arabian American Oil Co., 379 U.S. 227, 85 S.Ct. 411, 13 L.Ed.2d at 255-257, 1964, concurring opinion of Mr. Justice Goldberg;

Fleischmann v. Maier Brewing Co., 386 U. S. 714, 87 S.Ct. 1404, 18 L.Ed.2d 475 at 478, 1967

Howell v. Alabama, 287 U.S. 45 at 69, 53 S.Ct. 55, 77 L.Ed. 158

Kansas C.S.R.Co. v. Guardian Trust Co., 281 U.S. 1, 50 S.Ct. 194, 74 L.Ed. 659

Reynolds v. Cochran, 365 U.S. 525,81 S.Ct. 723, 5 L.Ed.2d 754, 1961

Mills v. Electric Auto-Lite Co., 396 U. S. 375, 90 S.Ct. 616, 24 L.Ed.2d 593, 606, 1970

Stewart v. Sonneborn, 98 U.S. 187, 25 L. Ed. 116

Universal Oil Products Co. v. Root Ref. Co., 328 U.S. 575, 66 S.Ct. 1176, 90 L.Ed. 1447

Williams v. Oklahoma City, 395 U.S. 458, 89 S.Ct. 1818, 23 L.Ed.2d 440, at 442, 1969

Arcambel v. Wiseman, 3 Dall. 306, 1. L.Ed. 613, 1796;
Day v. Woodworth, 13 How. 363, 1 L.Ed. 613;
Glade v. Walgreen Co., 46 F.Supp. 396 (1942, D.C. Ill) Aff'd 135 F.2d 590 (C.A. 7th)
Kelly v. Bowman, 104 F.Supp, 973 (D.C. Ill. 1952)
Schroeder v. Busenhart, 80 Ill.App.2d, 4 431, 225 N.E.2d 702;
U.S. v. Taylor, 11 F.470, C.C. Kan., 1882
U.S. v. The Nuestra Senora de Regla, 17 Wall. 29, 21 L.Ed. 596

Miscellaneous:
United States Constitution, Amendment XIV
United States Constitution, Amendment VI
28 U.S.C. Sec. 1257
Ill.Rev.Stat., Chap. 110, Sec. 41
Ill.Rev.Stat., Chap. 110, Sec. 57 (2) and (3)
Circuit Court of Cook County, Ill. Rule 6.1(b)

IN THE
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NO. _____

GERALD A. SCHROEDER and
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PETITION FOR WRIT OF CERTIORARI TO
THE APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT, SECOND DIVISION

The petitioners, Gerald A. Schroeder and Clara Johnson Schroeder, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Appellate Court of the State of Illinois, First District, Second Division, entered in this proceeding on May 20, 1971, in favor of defendants below, respondents herein: J. C. Busenhart, R. A. Schiller, Frank Jantac, Margaret Marble, Clayton P. Brown, Mrs. K. G. Gunter, Mrs. June Brownell, Robert C. Nordli, William L. Cox, Deanne R. Tubbs, Kenneth C. Carroll, Edward C. Nofret, L. R. Murphy, David C. Hanna, William A. Krampert, Robert Wood, Raymond Busse, Arthur Busse, George L. Busse, Arthur Skelton, Wesley Landmier, and Glen R. Grunewald, for the use and

benefit of the Board of Education, School District 57, Cook County, Illinois.

OPINION BELOW

The opinion of the Illinois Court of Appeals, reported as ___Ill.App.2d.___ 272 N.E.2d 750 (1971), appears in the Appendix hereto. No opinion was rendered by the Illinois Supreme Court in denying Petition for Leave to Appeal, and in denying Petition for Reconsideration.

JURISDICTION

The judgment of the Appellate Court of the State of Illinois was entered on May 20, 1971. No petition for rehearing was filed. A timely petition for leave to appeal was filed in the Supreme Court of Illinois, and this petition was denied. A timely motion for reconsideration was denied on November 9, 1971, and this petition for certiorari was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1257.

QUESTIONS PRESENTED

1. Whether the Appellate Court of Illinois decision contravened the 14th and 6th Amendments to the United States Constitution when, under an Illinois statute permitting the granting of attorney's fees against a party for "allegations...made without reasonable cause and not in good faith and found to be untrue," the court awarded attorney's fees in favor of respondents:

(a) For attorney's fees on appeal, after the trial court originally found the complaint pleadings not filed without reasonable cause, in good faith, and not to be untrue;

(b) For attorney's fees of an attempted intervenor, who was not a party to the action, and whose petition for leave to intervene had been denied by the trial court;

(c) For attorney's fees for multiple attorneys, with overlapping and duplicative efforts; and

(d) For attorney's fees on appeal, in response to an amendment made in the trial court more than thirty days after the mandate of the appellate court had been filed.

2. Whether the Appellate Court of Illinois decision contravened the 14th and 6th Amendments to the United States Constitution in denying the petitioners' motion for continuation, under circumstances of a new attorney having been

retained in the case only a few days prior and whether Rule 6.1(b) of the Circuit Court of Cook County specifically stating that a continuance shall not be granted upon ground of substitution of attorney violates said United States constitutional provisions.

3. Whether the Illinois Court summary judgment procedures under the circumstances of this case violate the 14th and 6th Amendments rights to equal protection and due process, and particularly the right to trial by jury.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States, Amendment XIV:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive a person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.

The Constitution of the United States, Amendment VI:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have a compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Illinois Revised Statutes, Chapter 110, Section 41:

"Allegations and denials, made without reasonable cause and not in good faith, and found to be untrue, shall subject the party pleading them to the payment of reasonable expenses, actually incurred by the other party by reason of the untrue pleadings, together with a reasonable attorney's fee, to be summarily taxed by the court at the trial."

Illinois Revised Statutes, Chapter 110, Section 57(2) and (3):

"(2) defendant. A defendant may, at any time, move without or without supporting affidavits for a summary judgment or decree in his favor as to all or part of the relief sought against him."

"(3) The opposite party may prior to or at the time of the hearing on the motion file counter-affidavits. The judgment or decree sought shall be rendered forthwith if the pleadings,

depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment or decree as a matter of law...

Rules of the Circuit Court of Cook County, 6.1(b):

"(b) Addition or substitution of attorneys - A continuance shall not be granted upon the ground of substitution or addition of attorneys."

STATEMENT OF THE CASE

The petitioners herein, plaintiffs below, filed a complaint against the respondents herein, and other defendants, charging a conspiracy to take certain real estate of the petitioners through the process of condemnation allegedly for school purposes. The petitioners further alleged in that complaint that certain of the defendants wrongfully failed on an appeal of that case, unrelated to this appeal, to raise the issue of "fee simple determinable" under the rule of Kelly v. Bowman, 104 F.Supp. 973 (D.C. Ill. 1952).

The trial court found in favor of the defendants, respondents herein, in a summary judgment proceeding, but specifically denied defendants' application for attorneys' fees under Sec. 41 of the Illinois Civil Practice Act for pleading "untrue statements." On appeal, the Appellate Court of Illinois, First District, affirmed the summary judgment for defendants, but reversed the trial court's refusal to grant Sec. 41 attorneys' fees. (Schroeder v. Busenhart, 80 Ill.App.2d 431, 225 N.E.2d 702.)

At the hearing on Sec. 41 attorneys' fees in the trial court, leave was granted the respondents to file instanter an amendment requesting attorneys' fees incurred not only at the original trial of the case, but also on appeal.

On September 18, 1968, the trial court entered an order granting the petitioners' attorney leave to withdraw, and directing that the case be heard on October

15, 1968, from which date no further continuance would be granted. On that date, the petitioners appeared with a substitute attorney, who presented a written motion for continuance; the motion stated that the attorney, Mr. Stewart, had been contacted by the petitioners on September 18, and on September 20, had retained him to examine the facts, "in this and several other matters," on which he had rendered a written report with recommendations on October 9. The motion further stated that the petitioners had retained Mr. Stewart "to represent them in this matter" on October 13, and the attorney being in trial on another matter on October 14 was unable to prepare for the hearing on the October 15 date.

The motion for continuance was denied and the hearing was held on Sec. 41 attorney's fees on October 15 and 16. The order found in favor of the respondent named individuals, "for the use and benefit of the Board of Education, School District 57, Cook County, Illinois;" the School District, however, had previously petitioned for leave to intervene, which petition had been denied by the trial court at the time the complaint was dismissed by summary judgment. In addition the court awarded the total sum of $16,168.46 for the use and benefit of the respondent Board of Education, which included attorneys' fee claims of two separate groups of attorneys.

The trial court denied post-trial motions, and a direct appeal was taken to the Illinois Supreme Court (No. 42136); this was transferred to the Illinois Appellate Court, No. 54611, with the

decision in favor of the respondents printed in the appendix hereto. The Illinois Supreme Court denied a petition for leave to appeal on September 29, 1971, and denied a motion for reconsideration of the order denying petition for leave to appeal on November 9, 1971.

REASONS FOR GRANTING THE WRIT

The Illinois Appellate Court has decided an important question of Federal substantive law not heretofore determined by this court, or in a way, probably not in accord with applicable decisions of this Court, and such a matter should be settled by this Court.

1. *Whether the Appellate Court of Illinois decision contravened the 14th and 6th Amendments to the United States Constitution when, under an Illinois statute permitting the granting of attorney's fees against a party for "allegations...made without reasonable cause and not in good faith and found to be untrue," the court awarded attorney's fees in favor of respondents:*

(a) For attorney's fees on appeal, after the trial court originally found the complaint pleadings not filed without reasonable cause, in good faith, and not to be untrue;

(b) For attorney's fees of an attempted intervenor, who was not a party to the action, and whose petition for leave to intervene had been denied by the trial court;

(c) For attorney's fees for multiple attorneys, with overlapping and duplicative efforts; and

(d) For attorney's fees on appeal, in response to an amendment made in the trial court more than thirty days after the mandate of the appellate court had been filed.

A vital issue ripe for resolution is the relationship of State civil penalties through attorney's fees, as these conflict with the constitutional requirements of equal protection and due process.

Perhaps the most basic of all human rights in a free society is the right of access to the courtroom; the effective use of legal counsel in the jury process unhindered by fear of crushing financial penalties if the case is lost.

In contrast to the English practice, it has long been the American rule that:

"Since litigation is at best uncertain one should not be penalized for merely defending or prosecuting a law suit, and that the poor might be unjustly discouraged from instituting actions to vindicate their rights if the penalty for losing included the fees of their opponent's counsel." (Fleischmann v. Maier Brewing Co., 386 U.S. 714, 87 S. Ct. 1404, 18 L.Ed.2d 475 at 478, 1967)

Thus, since the earliest days of our court system, it has been the policy of this Court against penalizing the losing

party with attorney's fees, for the precise purpose of keeping access to the courts free and untrammeled. (Arcambel v. Wiseman, 3 Dall. 306, 1 L.Ed. 613, 1796; Day v. Woodworth, 13 How. 363, 1 L.Ed. 613; U.S. v. The Nuestra Senora de Regla, 17 Wall. 29, 21 L.Ed. 596.)

Lower federal courts have interpreted this to deny them the power to use attorney's fees as a penalty, even in vexatious cases, without further authority. Glade v. Walgreen Co., 46 F.Supp. 396 (1942, D.C. Ill.) Aff'd 135 F.2d 590 (C.A. 7th)

With this general rule that attorney's fees are not recoverable against the losing party, there are exceptions, particularly based on the "common fund" or those circumstances where a plaintiff maintains a suit in behalf of a class which substantially benefits a large group of other parties who were not otherwise bearing the fees expenses. Mills v. Electric Auto-Lite Co., 396 U.S. 375, 90 S.Ct. 616, 24 L.Ed.2d 593, 606 1970. However, this Court has held that attorney's fees would not be awarded against a plaintiff, even in a malicious prosecution proceeding. Stewart v. Sonneborn, 98 U.S. 187, 25 L.Ed. 116

Particularly where the effect of attorney's fees, once denied in the trial court, are granted after appeal, this fails at the critical appellate level to "ensure that access is not denied to those of moderate means." Farmer v. Arabian American Oil Co., 379 U.S. 227, 85 S.Ct. 411, 13 L.Ed.2d at 255-257, 1964, concurring opinion of Mr. Justice Goldberg.

Thus, this Court has refused requests for attorney's fees on appeal (Kansas C.S.R. Co. v. Guardian Trust Co., 281 U.S. 1, 50 S.Ct. 194, 74 L.Ed 659), and in a slightly different context has concluded:

"The equal protection clause requires that once a state establishes avenues of appellate review, those avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts." (Williams v. Oklahoma City, 395 U.S. 458, 89 S.Ct. 1818, 23 L.Ed. 2d 440, at 442, 1969).

"This clause does not exist if the kind of an appeal a man enjoys depends on the amount of money he has." Douglas v. People, 83 S.Ct. 814, U.S. 353, 9 L.Ed. 2d 811, rehearing denied 83 S.Ct. 1288, 373 U.S. 905, 10 L.Ed2d 200.

This Court has concluded that parties volunteering to involve themselves in a lawsuit are allowed neither their attorney's fees nor their expenses. (Universal Oil Products Co. v. Root Ref. Co., 328 U.S. 575, 66 S.Ct. 1176, 90 L.Ed. 1447.)

2. Whether the Appellate Court of Illinois decision contravened the 14th and 6th Amendments to the United States Constitution in denying the petitioners' motion for continuation, under circumstances of a new attorney having been retained in the case only a few days prior and whether Rule 6.1(b) of the Circuit Court of Cook County specifically stating that a continuance shall not be granted upon ground of substitution of attorney violates said United States constitutional provisions.

Equally basic to due process and equal protection constitutional safeguards is the right for counsel to have sufficient time to prepare adequately for his client's case. This Court has repeatedly held that:

"If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing and, therefore, of due process in the constitutional sense." (Howell v. Alabama, 287 U.S. 45, at 69, 53 S.Ct. 55, 77 L.Ed. 158.)

Accordingly, this Court has held failure to grant a continuance to obtain an attorney as reversible error. (Reynolds v. Cochran, 365 U.S. 525, 81 S.Ct. 723, 5 L.Ed. 2d 754, 1961; Chandler v. Fretag, 348 U.S. 3, 75 S.Ct. 1, 99 L.Ed 4.)

Thus it would appear that the Cook County Circuit Court rule No. 6.1(b) is in conflict with these decisions of

this Court.

3. Whether the Illinois Court summary judgment procedures under the circumstances of this case violate the 14th and 6th Amendments rights to equal protection and due process, and particularly the right to trial by jury.

Just as the directed verdict is not a substitute for a jury trial (U.S. v. Taylor, 11 F. 470, C.C. Kan. 1882), so the summary judgment procedure cannot substitute for the due process and equal protection right of a contested matter, including the issue of attorney's fees, to be heard by a jury.

CONCLUSION

The overwhelming effect of the proceedings below is to deprive the petitioners of the effective use of the courts, as is their right under the Federal Constitution. But the significance of this type of practice, for every litigant, is to put a drastic financial penalty upon the possibility of taking a case to appeal and failing, which in turn has its greatest effect upon the indigent, the individual of limited resources, and the individual without substantial corporate or other instutional financial resources.

The case herein reached the curious result that the filing of the complaint in the trial court was not unreasonable, but the appeal was found to be unreasonable and subjected the entire proceed-

ing to attorney's fees of the adverse parties. Added to this were the fees of an officious intermeddler, and overlapping and duplicative efforts of multiple attorneys. These overwhelming financial burdens on the appellant litigants raise this case to profound constitutional dimensions, and for these reasons a writ of certiorari should issue to review the judgment and opinion of the Illinois Appellate Court.

Respectfully submitted,

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February 7, 1972

APPENDIX

No. 54611 (Ill.App.2d ; 272N.E.2d 750,1971.)

GERALD A. SCHROEDER and CLARA E. SCHROEDER, Plaintiffs-Appellants,	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.
vs.	)	
J. C. BUSENHART, et al., Defendants-Appellees,	)	
and.	)	HONORABLE ABRAHAM
LATTOF MOTOR SALES, INC., Defendant.	)	BRUSSELL, PRESIDING.

MR. JUSTICE McGLOON DELIVERED THE OPINION OF THE COURT.

This is an appeal by plaintiffs from a judgment of $16,168.46 made to defendants for attorneys' fees and expenses pursuant to defendants' petition filed under Section 41 of the Civil Practice Act. A direct appeal was taken to the Illinois Supreme Court by plaintiffs. The Supreme Court directed that this court hear the appeal. On oral argument in this court, plaintiffs' counsel agreed that the constitutional issues raised by them in their briefs were foreclosed by the action of the Supreme Court in transferring the case to this court.

We affirm.

This case is yet another in this "apparently unending litigation." Schroeder

v. Busenhart, 80 Ill. App. 2d 431, 441, 225 N.E. 2d 702. The history of the litigation is discussed at great length at pages 434-8 of 80 Ill. App. 2d, 431, and 703-5 of 225 N.E. 2d 702. At that time this court decided, and it is res judicata in this appeal, that the plaintiffs had filed a suit without reasonable cause, not in good faith and untrue, so as to subject the plaintiffs to the provisions of Section 41 of the Civil Practice Act which states in its entirety:

> Untrue statements. Allegations and denials, made without reasonable cause and not in good faith, and found to be untrue, shall subject the party pleading them to the payment of reasonable expenses, actually incurred by the other party by reason of the untrue pleadings, together with a reasonable attorney's fee, to be summarily taxed by the court at the trial. Ill. Rev. Stat. (1963) Ch. 110, Sec. 41.

Pursuant to the mandate of this Court, the matter was returned to the Circuit Court of Cook County for a hearing to determine the amount of attorneys' fees and expenses to be assessed against the plaintiffs.

The cause was remanded back to the trial court, and the mandate was forwarded by the Clerk of the Appellate Court to the Clerk of the Circuit Court of Cook County on October 20, 1967.

The record is unclear as to what happened to that mandate, and a new mandate

issued on March 13 and was filed with the Clerk of the Circuit Court on March 15, 1968. On April 3, 1968, the cause on motion of the defendants was reinstated and the matter assigned for hearing.

On April 24, 1968, leave was granted to defendants to file an amendment to their Section 41 petition to tax the expenses and attorneys' fees incurred by reason of the appeal. On September 18, 1968, the trial court allowed the then attorney for plaintiffs to withdraw, and set the hearing for October 15, 1968. The order further stated the hearing would "proceed whether or not plaintiffs herein have by that time retained counsel to represent them with respect to said hearing."

On October 15, 1968, plaintiffs' new counsel filed a verified motion for a continuance. This motion was denied. Plaintiffs' new counsel made an oral motion to strike the Section 41 amendment tendered by defendants in the trial court stating that the said amendment was a new complaint.

A review of the record discloses that plaintiffs' new attorney was consulted September 20, 1968, and retained to look into the case. On October 9, 1968, counsel rendered a report to plaintiffs. On October 13, 1968, he was retained to handle the case and appear at the hearing of October 15, 1968.

Between September 28, 1968, and October 14, 1968, plaintiffs were unable to

give their new counsel a working file of the case. In the verified motion for a continuance it was alleged that counsel wanted copies of all the pleadings filed after the return of the mandate. After a full hearing on the motion for a continuance, the judge denied the motion based on his order of September 18, 1968.

At the hearing on October 15 and 16, 1968, plaintiffs moved to strike the amendment of April 24, 1968, calling for taxing the expenses and attorneys' fees incurred on the appeal in addition to taxing the expenses and attorneys' fees incurred in the trial court. The trial court reserved ruling on that motion and proceeded to hear evidence on the issues. On November 22, 1968, judgment was entered for defendant taxing expenses and attorneys' fees to plaintiffs of $16,168.46.

Plaintiffs argue that the court arbitrarily abused its discretion in denying their motion for a continuance on October 15. Supreme Court Rule 231(f) provides that "no motion for the continuance of a cause made after the cause has been reached for trial shall be heard, unless a sufficient excuse is shown for the delay." Ill. Rev. Stat. (1967) Ch. 110A, Sec. 231(f).

The rules of the Circuit Court of Cook County state specifically that a continuance shall not be granted upon the ground of substitution of attorney. Rule 6.1(b).

Defendants are correct in their position when they assert that a request for a continuance made on the day a hearing was to start was not such an arbitrary act on the part of the trial court as counsel for plaintiffs was the third attorney in a four-month period to appear in this cause, and the trial court had advised all parties a month earlier that no further continuances would be granted. The harm which plaintiffs seek to prevent in the cases which they cite is the denial of an opportunity for effective representation by counsel. Here counsel distinguished himself by the vigorous and thorough manner in which he conducted plaintiffs' case. We do not believe that the trial court's action in denying further continuances in these circumstances in any way prejudiced the plaintiffs.

The plaintiffs further claim that the court improperly and arbitrarily entered a judgment against them without having disposed of their oral motion to strike the Section 41 amendment. The court at the time the motion was made reserved ruling thereon.

Plaintiffs also raise a question of lack of jurisdiction on the part of the trial court to allow an amendment to the Section 41 petition.

In Standard Statistics Co. v. Davis, 317 Ill. App. 377, 45 N.E. 2d 1005 (1942) the Appellate Court reversed where a motion had not been ruled upon. The court found that the motion was well

taken and had to be granted. In the instant case it would have been better had the court ruled upon the oral motion. Indeed, sub silentio it was denied, and the court treated it as if it had been denied and properly so. We do not see how the plaintiffs were prejudiced in any way. Moreover, defendants properly contend that in this case the plaintiffs never renewed their oral motion to strike the amendment, and thus waived it. Trimmer v. Franklin Life Insurance Co., 319 Ill. App. 520. 49 N.E. 2d 642 (1943).

The next issue raised by plaintiffs is that the defendants did not ask for those expenses and attorneys' fees associated with perfecting the appeal reported in 80 Ill. App. 2d 431, 225 N.E. 2d 702 until more than 30 days had elapsed after the mandate had issued from the Appellate Court. This contention is not well taken for the following reasons: 1) The objection was not timely raised: it was not raised at the time the amendment was filed, nor at any time until orally raised at the hearing October 15. 2) The 30-day period would run from the date of reinstatement, not the date the mandate issues. See Lind v. Spannuth, 8 Ill. App. 2d 442, 131 N.E. 2d 796 (1956). In this instance the amendment was offered within 21 days after reinstatement of the case. 3) The 30-day rule does not apply where the case continues but only where jurisdiction ceases following a final judgment.

Rule 41 is silent as to whether expenses and attorneys' fees on appeal may be taxed to a party. However, it is now

clear that such expenses and attorneys' fees are properly taxed under Rule 41. In Manchester Insurance and Indemnity Co. v. Strom, 122 Ill. App. 2d 183, 258 N.E. 2d 150 (1970), the court found that where the initial action was without any basis and in bad faith, that:

> ...the appeal is a needless extension of a baseless lawsuit. By this appeal, it appears that the plaintiff has remained stubbornly litigious and has caused the defendants and third parties additional unnecessary expenses for which they are entitled to reimbursement under the provisions of Section 41 of the Civil Practice Act.
>
> We believe that the amount of reasonable attorneys' fees incurred in connection with the appeal should be determined at a full hearing and that such determination should be made by the trial court, upon petition and answer or other appropriate pleadings, and after the evidence has been received on this issue. 122 Ill. App. 2d at 190, 258 N.E. 2d 155.

Manchester decided that reasonable attorneys' fees and expenses are included under the Section 41 penalty even through the Appellate proceedings. In the Manchester decision the Appellate Court stated that the amount of reasonable attorneys' fees should be determined at a full hearing and that such determination should be made by the trial court, upon petition and answer or other appropriate pleadings. Therefore, the question raised by plaintiffs that the trial court

lacked jurisdiction to allow an amendment to the Section 41 petition is not well taken.

The plaintiffs contend that the trial court improperly assessed attorneys' fees and expenses incurred in connection with preparing the petition for intervention filed by the School Board. Many of the individual defendants had been sued because of their position as trustees of the School Board. We are not going to dissociate the action of the School Board from that of its members in this case. It was proper to file such a petition in attempting to defend the frivolous lawsuit brought by plaintiffs.

Plaintiffs ask that the award not include fees for more than one attorney as the language of Section 41 is in the singular. This assertion is in conflict with An Act to revise the law in relation to the construction of the statutes (Ill. Rev. Stat. (1967) Ch. 131, Sec. 1.03) which states that "words importing the singular number may extend and be applied to several persons or things...."

In The absence of any showing of duplication of work on the part of attorneys, whether they were in the same lawfirm or in a firm not associated, the fact of nonassociation in a lawfirm will not prevent counsel whose work is otherwise compensable from being included in the costs of a Section 41 award. Plaintiffs' argument

that the award was an abuse of discretion was made with no reasons whatsoever given in support of their position.

JUDGMENT AFFIRMED

McNAMARA, P.J.; and DEMPSEY, J., concur.